

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ANTHONY LEPORE and SIEGFRIED LANG

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Appeal No. 2001-1720  
Application No. 08/821,869

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ON BRIEF

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Before OWENS, DELMENDO, and JEFFREY T. SMITH, Administrative Patent Judges.

DELMENDO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 (2002) from the examiner's final rejection of claims 1 through 28 in the above-identified application.

The subject matter on appeal relates to a composition for killing pathogens in a liquid waste containing blood. Further

is effective to provide within 24 hours a 6 log kill of pathogens in a liquid waste containing blood, and wherein

the composition contains sufficient quantity of polyvinylpyrrolidone and iodine such that when a sufficient amount of the composition is added to 90 grams of a liquid waste containing blood, the weight of the combined weight of the polyvinylpyrrolidone and the iodine composition is greater than 0.3% of the total weight of the waste containing the composition.

The examiner relies on the following prior art references as evidence of unpatentability:

|                           |  |               |
|---------------------------|--|---------------|
| Shanbrom                  | 5,370,869                                | Dec. 6, 1994  |
| Vallieres                 | 5,595,731<br>(filing date Sep. 21, 1995) | Jan. 21, 1997 |
| Greff et al.<br>(Greff)   | 5,684,042<br>(filing date Jan. 10, 1997) | Nov. 4, 1997  |
| Rackur et al.<br>(Rackur) | DE 33 13 655 C2                          | Mar. 23, 1995 |

Claims 1 through 7 and 26 through 28 on appeal stand rejected under 35 U.S.C. § 103(a) as unpatentable over Greff in view of Shanbrom. (Examiner's answer of Sep. 6, 2000, paper 21, page 3, referring to the Office action of Feb. 15, 2000, paper 18, pages 2-3.) Also, claims 2, 3, 8, 9, 13 through 15, and 19

Feb. 15, 2000, pages 3-4.) Further, claims 4 through 6, 10 through 12, and 22 through 25 on appeal stand rejected under 35 U.S.C. § 103(a) as unpatentable over Greff in view of Shanbrom and further in view of Rackur.<sup>1, 2</sup> (Answer, page 3, referring to the Office action of Feb. 15, 2000, page 4.)

We reverse the aforementioned rejections.

Claim 1, the sole independent claim on appeal, recites that the composition comprises a "gelling agent." The present specification enlightens one skilled in the relevant art that the "gelling agents are superabsorbents and include crosslinked polymers of acrylate or methacrylate monomers..." (Page 4, lines 26-30.) Thus, we must interpret the term "gelling agent" as referring to "superabsorbents." Multi-form Desiccants, Inc. v. Medzam, Ltd., 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998) ("It is the person of ordinary skill in the field of the invention through whose eyes the claims are construed. Such

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<sup>1</sup> In the Feb. 15, 2000 Office action, claims 16-18 were also rejected on this ground. The answer, however, does not include claims 16-18 in the statement of the rejection.

person is deemed to read the words used in the patent documents with an understanding of their meaning in the field, and to have knowledge of any special meaning and usage in the field."); Hoechst Celanese Corp. v. B.P. Chems. Ltd., 78 F.3d 1575, 1578, 38 USPQ2d 1126, 1129 (Fed. Cir. 1996) ("A technical term used in a patent document is interpreted as having the meaning that it would be given by persons experienced in the field of the invention, unless it is apparent from the patent and the prosecution history that the inventor used the term with a different meaning.").

The examiner's rejections are premised on the assumption that the thickening agent (e.g., polymethyl methacrylate) described in Greff at column 7, line 65 to column 8, line 15 is a "gelling agent." (Answer, page 4; Feb. 15, 2000 Office action, page 2.) The examiner, however, has not presented any evidence or scientific reasoning to establish that Greff's thickening agent can function as a gelling agent, i.e. a superabsorbent. While Greff discloses polymethyl methacrylate as a suitable thickening agent, the reference is completely silent on whether

contemplated by the appellants at page 4 of the specification.<sup>3</sup>

The examiner has cited the remaining references, namely Shanbrom, Vallieres, and Rackur for claim elements unrelated to the "gelling agent." Accordingly, these other references do not cure the fundamental deficiency of the examiner's position.

For these reasons, we hold that the examiner has failed to establish a prima facie case of obviousness against any of the appealed claims.

The decision of the examiner is reversed.

REVERSED

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| Terry J. Owens              | ) |             |
| Administrative Patent Judge | ) |             |
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| Romulo H. Delmendo          | ) |             |
| Administrative Patent Judge | ) | APPEALS AND |
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Appeal No. 2001-1720  
Application No. 08/821,869

Jeffrey T. Smith  
Administrative Patent Judge

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